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Justice Scalia Gives Keynote Speech at GW Symposium

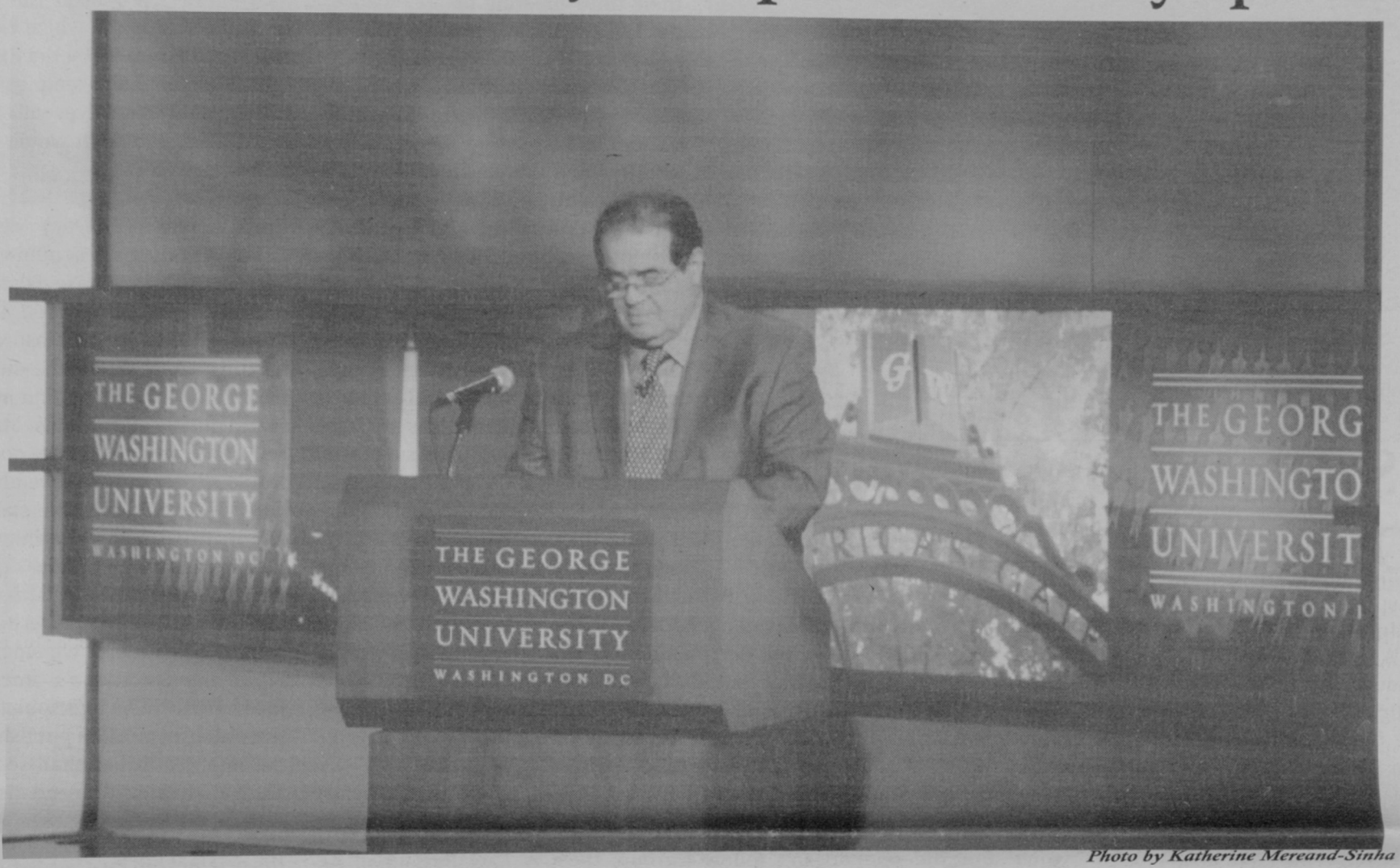

Photo by Katherine Mereand-Sinha

By Katherine Mereand-Sinha
Editor in Chief

Opening this year's Law Review Symposium last Thursday, Justice Anton Scalia addressed George Washington University Law students and faculty regarding "The Methodology of Originalism". As Dean Berman aptly stated in his remarks, such an honor is one that students at other law schools would "kill for" but not an uncommon occurrence at GW Law.

Indeed, Justice Scalia was not the only judicial luminary gracing this year's symposium. Several appellate court judges took part in a panel discussion on day two, including Easterbrook, Kavanaugh, Lettow, Raggi, Sutton, and Diane Wood. Students on the law review and those who secured a lottery ticket for the keynote or RSVP'd to the panels on Friday were treated to discussions relating to the 100th Anniversary of Farrand's Records of the Federal Convention.

The late Max Farrand, a Professor of History at Yale and a president of the American History Association, reconstructed records from the Federal Convention in 1787. The compilation relied heavily on individual notes of the official secretary and other attendees such as James Madison; the three volume collection was published in 1911. Farrand's Records, which were meticulously constructed, have long been cited as a primary source for determining the framer's "original intent".

Reading the 200-year-old tea leaves of original intent, however, is something Justice Scalia emphatically rejects. He went as far as to say "I detest the term" intent. In his remarks and during an audience Q&A he more than once stated "I don't care" what lawmakers, from any era, intended. Words have "fair meaning" and there is "nothing but the text" to determine the true purpose of a law. If the drafters of a law did not look up the meaning of the language at the time, too bad, because they should have.

How, then, might the Justice find the Records, the Federalist Papers, or even Blackstone's useful? He admits that intent is of no judicial import and the meaning of words change overtime, but also proudly highlighted his use of definitions from Blackstone in the Court's recent "originalist opinion" in Heller. He walked the audience through several aspects of Heller, including the fact that Blackstone's definition of the right to bear arms classified it as one of the "fundamental rights of Englishmen" at the time of the founding of America.

He drew a fine but clear line when during the Q&A many questioners attempted in vain to catch him in a logical fallacy or inconsistency for relying on ancillary historical texts in some opinions. The meaning of words, under his theory of originalism, is reliant upon a framework of their meaning in the context of law at the time they were written.

Thus the meaning of words is not what "99 percent of people" think and we cannot expect the "Joe the Plumber" equivalent in any era to understand such technical meaning. Instead, he says, it is uniquely the judge or the lawyer's role to determine the "reasonable" meaning within the context of the law. And while no source is definitive, "clues in mysteries always point in different directions" he explained, determining the appropriate weight of historical authority is eminently judicial. He likened his role to that of the Oxford English Dictionary, albeit for a smaller, more focused lexicon.

A few reasons underpin the important distinction between Justice Scalia's brand of originalism and all other legal theories, most particularly the legitimacy of judicial power and the "ease of lawyerly application" of the law. The first speaks to the distinction between legislative and judicial power. Citing issues such as abortion, sodomy, assisted suicide, capital punishment, and capital punishment applied to minors, he finds that these are not new phenomena that the framers did not or could not have contemplated, in sharp contrast to the Internet. It was in fact common, he reminded the audience, for children as young as 12 to be put to death in late eighteenth century. For the judiciary to stray into addressing settled phenomena in a new ways is to invite jurists to apply their own moral philosophy to the law. That is why Justice Scalia maintains that originalism is not perfect, it is merely the lesser evil that better avoids judicial abuse.

The Justice also shared his opinions on some other related topics. He discussed the integral role of history in law and law in history. He lamented what he calls the unfortunate trend of professorial amici, describing it as "advocacy parading as disinterested scholarship." And he noted that there is nothing distinctive about female judges as compared to male judges– in his view, there are only good judges and bad judges.

Perhaps most directly useful to students were the Justice's remarks about oral arguments. When asked whether he found them of value, he confessed that at first he assumed that they would be nothing more than a "dog and pony show". Yet, to his surprise, he became a big believer in their value, as they allow lawyers to be true advocates. Briefs, by their nature, are logically structured, often spending more time explaining complicated minutia than simple but key ideas. In oral argument, however, "logical order be damned [...] put your big point up front".

NEWS

Nota Bene

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Nota Bene is a bi-weekly student publication at The George Washington University Law School. Nota Bene serves as a forum for news, features, and opinions in the law school community.
We seek submissions from all at GW Law.

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Students for a Sensible Drug Policy Take a Trip

By Alex Giannatasio
News Editor

On October 14, 2011, the GW Law Chapter of Students for a Sensible Drug Policy (SSDP) took a trip to the Drug Enforcement Administration (DEA) Museum in Arlington Virginia, in what turned out to be a memorable outing.

*SSDP is a national organization fo*cused on shifting the drug issue from the criminal realm to the public health realm, according to Justin Butler, Vice President for Social Outreach of the GW Law Chapter. "Addiction is a health issue, and should be treated as such," Butler explained. "Our goal is to change the angle from which we look at addiction and other drug-related issues as a nation."

SSDP arrived at the DEA Museum expecting a traditional guided tour from a museum employee. Instead, the group was met by Supervisory Special Agent Namon Jones, a career field agent with nearly 30 years of experience in undercover fieldwork with high-level drug dealers. "You could not imagine a meeting of two more divergent viewpoints," Butler chuckled. He added, "Of course, we afforded him the level of respect he deserves, having spent his professional career going after murderers and putting bad people behind bars."

The DEA Museum is not very extensive, and what had started as a tour soon became a spirited question and answer session. "Agent Jones had three particular positions that we found quite striking," said Butler.

His first position was that marijuana is a "gateway" drug. "That's a chicken and the egg argument, and always has been," Butler said. "It's impossible to prove." The "gateway" theory posit that marijuana use opens the door to more dangerous drug use and abuse. Butler takes issue with this line of reasoning, arguing that the decision to use any substance comes down to personality type.

"Maybe an individual who tries and enjoys marijuana use will decide *to try other drugs—and maybe he won't. But the one doesn't follow* from the other. In other words, no one particular substance leads to the use of other substances. That would be like saying that an individual who tries alcohol is more likely to try marijuana, and therefore more likely to try cocaine. In reality, individuals who are more likely to try substances in general are more likely to try substances in general...it has nothing to do with which substances they end up using...."

Secondly, Agent Jones asserted that marijuana use can cause schizophrenia. "That theory was disproven in the British medical journal Addiction, not too long ago," Butler said. The article, which holds that "the evidence that cannabis use causes schizophrenia is neither very new, nor by normal criteria, particularly compelling," can be found online (link on thenotabene.org).

Finally, Agent Jones claimed that marijuana has no medicinal benefits besides increasing the appetites of cancer patients undergoing chemotherapy. "That was a nice give of him, but it looks past all the other evidence that has come out concerning everything from mood regulation to Postraumatic Stress Disorder in soldiers to increasing appetite and comfort in AIDs patients."

Overall, the trip was a success, says Butler. "If nothing else, it was very informative of the government's positions."

Transparency Debate Runs Long, Patience Runs Short

By Mark Aaron Cox
SBA Correspondent

The SBA Senate convened on Monday, October 24th in L202 for their third meeting of the Fall 2011 schedule.

The GW Law Softball Club asked the Senate for $1,600 in ad hoc funding to supplement group funds for several upcoming tournaments and replace heavily worn equipment. The Finance Committee, in customary fashion, recommended a reduced total of $1,000.

The GW Law Softball Club appears to enjoy widespread support throughout the law school. Several senators praised the organization as inclusive and noted its history of successful fundraising, while others pointed out that, with their successful fundraising, they were one of the organizations least in need of supplemental funds. Several proposals were put forth for alternately higher or lower amounts than the Finance Committee's recommendation, but ultimately the Senate approved the $1,000 total by a vote of 12-3-5.

Carissa Tyler (3L) appeared before the Senate to request approval of the *Constitution for a proposed student group, the GW Law Basketball As*sociation. At present, the unofficial organization oversees recreational, semi-competitive basketball games between law students. Ms. Tyler encountered difficulties when attempting to reserve courts at the Lerner Health and Wellness Center, which only awards reservations to official student groups. After some light discussion, the Senate approved the Constitution, and thus formed a new organization, by a unanimous voice vote.

The Senate then voted to confirm two nominees to the SBA Court. Michael Coffey (2L) and Marissa Abraham (2L) addressed concerns relating to students' general lack of knowledge about the SBA Judiciary. Both expressed the abstract goal of promoting awareness of the Judiciary. Even Mr. Coffey admitted that he "[didn't] really know how the three branches operate [together] at GW." After fielding several hypothetical questions concerning past issues faced by the Judiciary, both nominees were confirmed by a unanimous voice vote.

The Senate renewed discussion of the Accountability Act, first proposed in the previous session. The text in the original proposal of Sam Stone (2L-Day) and Dean Aynechi (2L-Day) would require the Senate to publish a brief statement following any closure of a meeting explaining the reason(s) for said closure, separate from the official minutes. A new amendment proposed by Rob Russo (2L-Evening) amended this text to require that the Senator who proposed the closure draft the statement, which would be subject to approval by the Executive Vice President and a simple majority of the Senate. In the event of disapproval, the statement would require redrafting.

Brad Carroll (2L-Day) disagreed strongly with the amendment, stating that the proposed legislation was unnecessarily complicated and that an explanation of the closure at the meeting itself should be sufficient, which could then be found in the already published minutes. Mr. Stone countered that a separate document would allow for more careful consideration of the disclosure statement, and Mr. Russo added that minutes are "not a transcript, and ideas get lost." Mr. Carroll remained firm, calling the bill a "procedural sideshow," and countered with his own amendment modifying Mr. Russo's amendment to Mr. Stone's text by stipulating that the statement will be published with the minutes rather than separately. The Senate moved to end discussion after thirty minutes and voted to approve the twice-amended version of the original bill by a vote of 18-3-1.

After seventy-five minutes, many senators were shifting restlessly and appeared anxious to wrap up the procedures. Discussion of the complementary bill, the Sunlight Act, was limited by motion to fifteen minutes.

The proposed Sunlight Act would require the keeping of minutes during closed-door sessions, which would later be published with redactions of statements made by individual senators. A senator would be permitted to remove his own comments from the record without approval from the Senate, and broader redactions can be authorized via simple majority approval.

The bill divided the Senate between those who supported it, those who did not, and those who wished to end the long-running meeting. Mr. Carroll proposed an amendment which would strike the mandatory publishing language from the bill. Juan Garcia-Pardo (1L-13) wished to know if the record would still show that "some comment" was made following its redaction. Mr. Stone noted that this is the objective of transparency legislation: to hold student representatives responsible for their words, even in closed-door meetings.

Noting that the issue was too unwieldy to resolve in fifteen minutes, the Senate moved to table the discussion, likely to revisit it during their next session.

NEWS

Cyberlaw Panel Discusses Implications of AT&T/ T-Mobile Merger

By Alex Giannatasio and Avonne Bell
News Editor/President of Cyberlaw

Last week, the Cyberlaw Student Association (CYLSA) hosted a panel discussion on legal and policy issues surrounding the recently proposed merger of wireless providers AT&T and T-Mobile. CYLSA President Avonne Bell (2L) moderated the discussion. The panel included GW Law Professors Natalie Roisman and Thomas Morgan, as well as representatives Sherwin Siy of Public Knowledge, a non-profit public interest group, and Berin Szoka of Tech Freedom, a non-profit libertarian think tank. Approximately two dozen students were in attendance.

The merger is big news. It implicates complex issues of antitrust law, telecommunications law, and administrative law, and brings renewed attention to several policy considerations in each of these fields.

The market for wireless providers in the United States is overwhelmingly controlled by four companies: Verizon, AT&T, Sprint, and T-Mobile. If the merger between AT&T and T-Mobile were to be consummated, 80% of the market would be concentrated in the hands of two companies—Verizon and AT&T/T-Mobile—leaving the future viability of Sprint in serious question.

The federal government cannot directly approve or disapprove of a merger, but the proposed merger does trigger the initiation of regulatory review processes at both the Federal Communications Commission (FCC) and the Department of Justice (DoJ).

Professor Roisman discussed the FCC's role in the possible merger. Primarily, the FCC deals with spectrum licensing, or the right to use radio frequencies for communications purposes. In order for the merger to have the desired commercial effect, AT&T would need to acquire the licenses currently owned by T-Mobile. Such transactions must first acquire the blessing of the FCC. The question implicated in an FCC review is whether or not the proposed license transfers are ultimately in the public interest. The public interest standard is not explicitly defined by the FCC's authorizing statute, so it allows the agency to consider a broad range of factors in making its determination. For this proposed merger, the agency may consider factors like the merger's ability to provide consumers with more handset choices, improve availability of faster mobile services, greater broadband access, or more efficient spectrum use. Ultimately, FCC disapproval of the license transfers would kill the deal.

This is a trying time for the FCC, as Professor Roisman pointed out. Currently, only four of the five commissioner spots on the FCC are filled and a second commissioner position is set to expire at the end of the year. Recently, the President has tried to address this by recently nominating two individuals to fill these slots. However, members of Congress have threatened to block their appointments. "That's not the way the FCC should look, especially when it has two major mergers before it," said Professor Roisman. The second megamerger — a controversial deal between Comcast and NBC — was approved earlier this year. Immediately following approval, FCC Commissioner Meredith Attwell Baker announced that she would be taking a job as Senior Vice President of Government Affairs at NBC, raising both eyebrows and questions.

Professor Morgan, Oppenheim Professor of Antitrust and Trade Regulation Law, discussed the DoJ's interest in the merger. Antitrust law is largely concerned with issues of concentration and competition in market economies. Conceptually, severe impediments to free and fair competition are generally considered unlawful. In the instance of a merger, the Hart-Scott-Rodino Act requires that parties to a proposed merger of a certain scale must provide the DoJ and the Federal Trade Commission with information relevant to the deal. DoJ then reviews the details for any conflicts with existing antitrust law, such as the Clayton Act. If conflicts are found, the government has two options. First, DoJ may make recommendations to the parties to the merger as to how to bring the deal in line with the law. Second, if DoJ determines that such recommendations would prove insufficient, the Antitrust Division brings suit against the parties to the deal. The latter course of action was taken in the AT&T—T-Mobile case, and litigation is pending. For the government to win the suit, the court would have to hold that the merger constitutes a violation of existing antitrust law.

But, as Professor Morgan explained, "the government could very well lose." The court will be forced to balance a number of factors in making its determination, including: the nature of the market at issue; market concentration and the tendency of the specific merger to form a monopoly; the effect of market concentration on competition; barriers to entry; merger-related efficiencies; and the economic viability of the parties. Under Section Seven of the Clayton

Continued on Page 4...

Future of Online Currencies Remains Doubtful

By Megan Brown
Staff Writer

It sounds like a plot element from a futuristic science fiction novel—a currency existing online and created by a shadowy figure. But Bitcoin and its enigmatic creator are real, offering an alternative to PayPal, credit cards and the U.S. dollar, at least for now.

Bitcoin is an example of a digital currency, a monetary system that stores value and can be exchanged on the Internet. While it is in some respects similar to the virtual currencies of some online games — such as the Linden Dollar in Second Life — Bitcoins can purchase real goods in the real world.

Satoshi Nakamoto created Bitcoin in 2009 as a decentralized, peer-to-peer network. Nakamoto's real identity is unknown and the subject of much speculation; the name may serve as an alias for a group of individuals. The New Yorker recently featured an article speculating that Nakamoto may be Michael Clear, the top computer science undergrad at Trinity College in Dublin in 2008. Clear denies that he is Nakamoto.

After downloading the Bitcoin software, a person can acquire Bitcoins in two ways. One can either "mine" Bitcoins or purchase them at an exchange, akin to exchanging US dollars for a foreign currency. "Mining" Bitcoins refers to creating a new algorithm to verify past Bitcoin transactions in return for a small number of new Bitcoins.

No central authority like a central bank or clearing agency regulates the use of Bitcoins. This makes them appealing to those who disapprove of the role central banks play in monitoring the monetary supply. Transactions carried out with Bitcoins afford buyers and sellers a far greater degree of privacy than credit card transactions. Bitcoin users do not have to provide any identifying information when creating an account. Bitcoin transactions take place using randomly generated public and private keys — cryptography devices — so neither the buyer nor the seller knows the identity of their counterpart. This stands in stark contrast to credit card transactions, which can easily be traced to the cardholder.

These benefits have not translated into the widespread use of Bitcoins, although they have generated a lot of interest. Few merchants accept payment in Bitcoins. So far, Bitcoin has failed to expand far beyond a small niche of tech-savvy users willing to take a risk.

"They're not something that I would consider to be a worth-while investment," said a GW 2L who preferred not to give his name. He learned of Bitcoin over the summer but has not seen the benefit of using them.

"I don't even like using PayPal. Usually if I am purchasing something online that requires me to buy something like that, I buy just enough to buy it because it's basically wasted money that I can't recoup to use for what I want. It would take something pretty crazy to happen for me to buy into something like that."

It's doubtful how much longer Bitcoin will last. Having reached a market high in June of about 32 dollars per coin, their value has since fallen to 3 dollars. Just before Halloween, cybersecurity blogs reported new malware affecting Macs in order to collect new Bitcoins. A digital currency with long-term viability may still be nothing more than the stuff of science fiction.

Congratulations to Sarah the Guinea Pig (photo by Carrie Rose Wilkinson) and the other winners of the SALDF Pet Photo contest

See our website (www.thenotabene.org) for more of the adorable pets!

NEWS

Merger, Continued from Page 3

Act, DoJ would have to prove, by a preponderance of the evidence, that "the effect [of the merger] may be... to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

Of course, the litigation itself is part of a bigger picture. As Professor Morgan noted, "the longer the litigation continues, the less likely it is that the deal will go through."

Representatives of the parties to the merger assert that the deal would have substantially positive repercussions for the public, including better access to services, broader availability of 4G LTE technology (widely heralded as the immediate future of telecommunications technology,) and the creation of thousands of private sector jobs. Others, including lawyers at DoJ, argue that further market concentration may well lead to higher prices for consumers, and increased difficulty in regulating preferential treatment and/or suppression of content.

Notably, AT&T accidentally released information on the FCC website indicating that the expansion of 4G LTE technology is not a merger-dependent factor. For its part, the job growth assertion runs counter to the general pattern of mergers, which *generally lead to redundancy layoffs in the interest of efficiency. In light* of this consideration, the FCC has requested further specific data corroborating predictions of job growth.

As the panel discussion continued, Ms. Bell had some difficulty managing the excitement of the two non-profit representatives, who engaged in a spirited ideological debate as to how the government should handle the merger on policy grounds.

Berin Szoka of Tech Freedom took umbrage with the use of "political theater" by FCC commissioners and congressmen in guiding the voluntary requests and actions of the private parties to mergers. Often parties to a merger will make various concessions in order to help move their approval process along. Agencies like the FCC technically have no authority to require these conditions but it is a tool that is often employed. "'Voluntary' standards aren't exactly voluntary. The FCC, for instance, can hold up a merger review indefinitely until they do what they the FCC wants." Specifically, Mr. Szoka cited the NBC/Comcast deal. According to Mr. Szoka, the FCC was able to force concessions on diversity from Comcast/NBC by slowing the approval process to a crawl until diversity concessions appeared in the deal. He called the FCC "adrift" in its public interest standard, and characterized the Commission's handling of spectrum licensing as "grossly mismanaged."

Mr. Szoka suggested that allowing the merger to proceed could have the positive consequence of creating a market entity able to compete on an equal playing field with Verizon—hands down the nation's leading provider of 4G LTE technology.

For his part, Sherwin Siy of Public Knowledge rejected "the idea that you could fight the behemoth by establishing a competing colossus." He pointed out that AT&T has plans to roll out 4G even if the merger fails. "Verizon has less spectrum and more customers, and they did it. Why can't AT&T?" In addition, he expressed concern that the model of voluntary concessions is insufficient to address *the market concerns. He expressed* reservations about the idea that allowing a company to gain significantly greater market share can be balanced out by having them abide by a few conditions.

In the end, the antitrust and regulatory concerns of the courts, private telecommunications corporations, and other interested parties hinge upon a balancing of the merger's pros and cons. It remains to be seen how the courts will receive DoJ's argument, and how the case itself will influence the FCC's decision on license transfers. The parties to the suit have requested expedited review, and a decision is tentatively expected some time next year. The final decision could have broad implications for lawyers and consumers alike in the very near future.

Dean Berman Implements New Committee on Curricular Innovation

By Melissa Milchman
Staff Writer

The concept of "one-size-fits-all" may work for Halloween costumes, baseball caps, and mittens. But the world of academia is slowly accepting that it may not work for education, particularly in those fields that require specialized skills and knowledge, such as the law.

Dean Berman expressed his disenchantment with the one-size-fits all approach to curriculum and curricular modifications, citing it as a factor in his decision to create the Strategic Planning Committee on Curricular and Pedagogic Innovation. The Dean announced this new committee in a September 2 post on his blog, 20th & H, along with the creation of the new Strategic Planning Committee on Law School Identity and Communication and the Strategic Planning Committee on Student Well-Being and Professional Development.

"I am interested in the committee thinking creatively about possible innovations, both large and small, that will improve the educational experience," Dean Berman said. "I have *not placed limitations on the sort of* matters the committee can consider, but I have stressed that at least some of the proposals should be reforms that we will likely be able to implement over the next year."

Dean Berman expressed his interest in seeing proposals for more targeted pathways for students in their second and third years to take a more focused course of study and possibly earn a certificate or indication of achievement in an area they have chosen to specialize in.

"The goal is that in any area that any student wants to study, we could design courses and experiences for and connect the student with a mentor so that the student could graduate with a set of skills, networks and opportunities that no other law school could have provided them" Dean Berman said.

Typically, curriculum committees are composed of faculty members, but the dean has asked that each committee consult with students as well.

Professor Karen Brown, chair of the Committee on Curricular and Pedagogic Innovation, said that she has already arranged for two students to take part in the weekly committee meetings that she holds with other involved faculty members, including Professor Christy DeSanctis, Professor Phyllis Goldfarb, Professor Jeff Manns, Professor Tom Morgan, Professor Joan Schaffner, and Professor Bob Tuttle.

Professor Brown said that the purpose of the Strategic Planning Committee on Curricular and Pedagogic Innovation is to meet the needs of the current job market, change the legal education to account for the evolving state of the field, and address the debate among the academic community about how to better prepare students for practice.

"We are trying to decide what we can do immediately so students can see a connection between law school and what they will be doing in the future," Professor Brown said.

Up to this point, the committee has done extensive research on problems in the traditional law school teaching model, as well as on alternative pedagogical models such as the case study method that is commonly used in business schools, Brown said.

"We do hope that it will allow us to address the needs of students in the changing landscape of the legal market. We are trying to find a way for our curriculum to address the needs of the field and equip students with relevant skills and experiences."

Professor Brown stated that one of the most crucial areas that the committee is considering is the first year curriculum. Finding ways to implement experiential learning into doctrinal classes to create a stronger foundation for first-year students is one of the many tasks of the committee.

In addition, the committee is considering adding a statutory or perspectives course to give first year students the opportunity to learn about the law from different viewpoints, Brown said.

In the future, the committee hopes to obtain student feedback. They are considering distributing a survey to the student body.

"Different impacts will be incremental," Professor Brown said. "Next year is a definite focus, but we are also creating proposals that will impact the curriculum and be implemented over the next two years and five years as well."

OPINIONS

A Place for Feminism in Occupy DC

By Julia Burke
Law Students for Reproductive Justice

By now, most of you have heard of the Occupy Wall Street protest that started September 17th in New York and has spawned similar occupations in cities around the world, including here in Washington DC. The mobilization's growth from a small, committed group of organizers in New York to a global presence with hundreds of physical occupations has been met with surprise, condemnation, and, in some cases, a renewed sense of hope.

The media struggles to make sense of Occupy Everything because it is unlike any other mass political movement in the nation's history, and their significance is their existence – a new form of social construction. An occupation serves as an end in itself: we are creating the world in which we want to live. Take a walk down to McPherson Square and you will see over 100 tents, lots of signs, and an incredible diversity of individuals. There is also a library, a medical area, a full legal team, a kitchen, and child care. And on any given day, Occupy DC hosts trainings ranging from the basics of the economic crisis to anti-oppression education. The occupations certainly exist as a symbolic display of discontent with the status quo, but mostly they serve as a space where all are welcome and encouraged to participate.

The occupations are a lot of things to a lot of people, but we firmly believe that they are relevant to feminism. The economic recession and subsequent austerity measures have hit women hardest. Women, especially poor women, rely heavily on social services such as women's health programs so that they can "do it all" - be mothers as well as workers, a role without which the current capitalist system cannot function. Yet when governments look for places to cut to balance the budget - a budget that is out of balance largely because of the bank bailouts of 2008 - social services are the first to go. The message to women from the corporations and the government is loud and clear: you are vital to our society and our families, but we think your needs are less important than ours.

Some find it easy to trivialize the connection between capitalism and patriarchy by reducing women to purely sexual beings in constant need of reproductive services, forgetting that Planned Parenthood also provides essential cancer screenings. It is a bit more difficult to find people willing to trivialize the connection when austerity measures potentially threaten the lives of women. Just last month, the city of Topeka, Kansas voted to stop prosecuting misdemeanor domestic violence for "budgetary reasons," simultaneously releasing accused offenders awaiting trial. Yet research shows that domestic violence increases against women in times of economic struggle. The goals of the occupations and the goals of feminism are deeply interconnected, which is why it is so important for women to get involved.

The occupations have attracted criticism, even from within the feminist community. Many feminists question the ability of an occupation that detaches from state services and police power to properly address sexual assault and rape, for police sometimes seem to be the only solution. This is a difficult issue, and one that we recognize alienates some women from participating in the occupations. However, it is our stance that women's participation is vital to the goal of creating a society that the current government fails to deliver.

If you are looking for ways to get involved, several GW students are collecting donations for Occupy DC. With winter fast approaching, the folks at the occupation need warm clothes, camping gear (sleeping bags, sleeping pads, tents), and tarps. Any additional contributions, including monetary, would be of great use. There is a bin near the first floor entrance of Burns, and cash donations can be made through the lovely Cris at the info desk. Online donations can be made through http://occupydc.org/donate/what-we-need/. Legal observer trainings are held a few times a week at McPherson Square and law students are especially encouraged to attend. A schedule of trainings can be found at occupydc.org.

In solidarity,
The GW Law Students for Reproductive Justice e-board.

To Occupy and to Serve

by Robert Stephens

By Robert Stephens
Staff Writer

When people find out that I have participated in the Occupy Wall Street movement, they often ask me to explain what we want. I am quick to remind them that I can only speak for myself, and not for the movement as a whole (this is one of the occupation movement's core principles). The popular critique seems to be that we are unfocused and we lack clear and measurable policy demands. I would like to respond to that critique.

The occupation movement is not a political movement; it is a personal and social awakening. For many of us, this is our first time participating in a group that validates and supports the mission to create a more just community. For the first time, many of us are finding our voices. Nonparticipants often wonder what the movement's demands are, but the occupations cannot be understood through a political lens. The movement doesn't speak the language of politics, which is why it doesn't need demands. Demands are points from which to make concessions, and ultimately, to reach compromise with a competing group. The most important thing to understand about the occupations is that people are creating a culture of personal and collective empowerment, not a political coalition.

Manissa McCleave Maharawal, an anthropology doctoral student, highlights the personal nature of the transformation.

"This made me realize that since getting involved in Occupy Wall Street I have felt myself change. Speaking up to block the Declaration of Occupy Wall Street so that its language was inclusive and didn't erase historical and current oppressions and inequalities (which you can read about here) was a moment in which I realized, in a way that I haven't before, that I can do this. That feeling was about that particular moment but also something larger, something that has grown to encompass thinking about ways in which to create a world outside of capitalism. I keep thinking: we can do this. And I'm not scared to say this stuff anymore, I'm not scared to articulate my hopes and dreams and wishes for the world. I'm not scared to sit down with Eliot Spitzer and debate capitalism, as did I last week for a New York Magazine piece a friend was putting together. Even if he is defensive and won't let me finish my sentences and tries to tell me that my thinking isn't "rigorous," even then I'm still not scared of him."

Personally, I feel empowered by my time at the occupations in New York and DC. This new sense of empowerment has led to me coming to a major conclusion: I no longer believe in the legal system to serve as a catalyst for social transformation. When the legal philosophy was established in this country, it was constructed according to the interests of the people who were in the room at the time: white, Anglo, land-owning, merchant, (presumably) heterosexual, male etc. In their system, any claim for just treatment must be articulated in their words and according to their rules, both of which were explicitly set up to benefit them and not the powerless. For example, the Civil Rights Act does not grant "protections" because a person is human; it works because discrimination affects interstate commerce. Your rights only extend as far as your purchasing power, which is no surprise given the elite economic position of the founders. The rights have to be articulated within the bounds of the original Constitutional provisions, only their rules and language grant recognition.

We pretend that our legal system is objective, when it is actually a subjective reflection of the men who constructed it. Any time people advocate for protection, they have to fit their struggle into the worldview of those 18th century men. I feel like oppressed people are in a constant fight to prove that we deserve to be included in the original conception of America. I think that in the battle to bend legal rules to accommodate marginalized and oppressed people, truth and justice are often obscured. For me, the truth is that this society was founded by slave-holders and mass murderers who were struggling to best balance the interests of land-owning industrialists and agriculturalists. I believe that a society founded on principles of exclusion and oppression can never be just. I feel that if we were to work together now, we could do so much better.

However, just as the founders of this country benefitted from a murderous regime of exploitation, the same can be said of modern Americans. If I don't believe that justice can flow from a system built on African slavery, Native American genocide, and exploitation, then justice cannot sprout from our modern society either. My comfort is based on sweatshops, drone attacks, and much of the same oppression that existed at the country's founding. How can I claim to be less oppressive than the founders of this country?

This epiphany is the reason I feel that the true power of the occupation movement is not found in its political demands. I and many others are experiencing a paradigm shift that calls for us to think beyond how we would like to structure power, but to instead focus on practical and ideal ways to treat one another

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OPINIONS

Law School Should Teach Us to Be Lawyers, Not Just to Think Like Them

By Michael Williams
Staff Writer

On my first day of law school, Professor Schechter told my torts class that the purpose of his course was not to teach us tort law, but to teach us how to think like lawyers. Torts law was merely a medium through which we would sharpen our ability to think analytically and recognize the logic in legal arguments.

Professor Schechter could have said the same thing to a civil procedure, corporations, or contracts class. The rules associated with any legal subject will always be a few clicks (or page turns) away. So good professors are wise to de-emphasize the importance of the rules in favor of teaching us how to think about them in context.

But learning to think like a lawyer is only part of the reason we came to law school; the real reason we're here is to become lawyers. And to that end, law school falls short. To better prepare students for success upon graduation, law schools should shift their emphasis away from Socratic classroom instruction and toward experience-based learning.

My Dream

Like many of you, I decided early in my college career to become a lawyer. Knowing I would go to law school, I chose a major that interested me, but didn't exactly endow me with highly marketable skills. That's what law school would be for. But law school, I've come to find, isn't designed for people like me.

You see, ever since I was a DJ (and a geek) in high school, I've wanted to own my own business. By the time I applied to law school, I was convinced that being a lawyer would be a great way to fulfill my entrepreneurial dream. I had it all planned out: I would graduate from law school, pass the bar, get a modest loan, hire a secretary, create a website, post some ads, rent a small office and open for business. If it worked for John Grisham characters, why couldn't it work for me? I would start small; maybe do some estate planning and some small-business work. My firm would grow organically with other lawyers coming on to meet demand. The best part about my plan was that I would be my own boss starting on day one.

My Reality

I'm only halfway through law school, but I've seen enough to put a serious damper on my dream of starting my own firm after graduation. The desire is still there, but the confidence is not.

In its current form, law school is very good at teaching us how to look things up, how to analyze laws and facts to support an argument, and how to cite sources using the Bluebook. In short, law school is very good at preparing us to work for other lawyers. I believe law school can and should do more than that.

What Law School Could Be

Clinics, externships and summer jobs are critical parts of law school education. But instead of just supplementing our legal education, they should be the core of it.

If I wanted to spend a few years of my life on cerebral, academic exercises with a practicum or two sprinkled in, I would have pursued an MA. One or two semesters of Socratic classroom learning is more than enough time to learn to think like a lawyer. After that, it all starts to blur. Just consider the glazed-over eyes of a 3L awaiting graduation. Second and third-year law students would be better served by an education that consists of less classroom instruction and more practice.

Here's an example to illustrate this deficiency: this week in my corporations class we learned that a corporation cannot be converted into an LLC, but that it can be merged into one. Good to know, right? But if someone actually came to me today and told me they want their corporation to become an LLC, I would do the same thing I would have done before I came to law school—look it up online and figure it out as I go. Then again, this problem might never arise in the first place since law school also fails to teach us how to solicit clients. I think there is a better way.

For a model of how to empower students with greater competence upon graduation, we need look no further than the university hospital. Obviously law and medicine are very different. But law school could do its students and its community a great service by functioning more like a medical school and less like a history class.

Almost invariably, the best medical care available is at university hospitals. There are two main reasons for this: one is their early adoption of new technology; but perhaps the bigger reason is that they attract the best physicians in the world with money and prestige.

What the university hospital is to health care, law school could be to legal services. Currently, real-life legal experience sponsored by law schools is limited to legal clinics. These clinics provide great services to clients and invaluable learning opportunities to students. But to make them immeasurably better—and to make law school a true training ground for lawyers—clinics should undergo three major changes: (1) clinics should be mandatory for every second and third-year student, (2) clinics should be the main focus of law school education, and (3) clinic clients should be charged market rates for services rendered.

The kind of law school I'm proposing would look very different from any existing today. Instead of a building full of classrooms, it would be a local network of hundreds of first-rate lawyers overseeing dedicated law students working for real clients. Some of those lawyers would be academics, but most would be successful practitioners being paid for the services they oversee. Just like the relationship between patients and their doctors, clients at law school clinics would recognize their lawyers' (and their respective firms') affiliation with a university as an indication that they are among the best in the business. This would ensure a market cycle powered by high client demand and a competitive supply of lawyers to staff the clinics. The result: law students doing real legal work. The lawyers, the law schools and the students would all win.

One of the beauties of law school is that it's only three years and then it's over. We're not required to do a residency or fellowship after we graduate (thank goodness). To maximize our return on these three years, law school needs to find a way to minimize its love affair with the classroom.

Professor Schechter was right. Learning to think like a lawyer is important. But unless law school is restructured to emphasize experience over Socratic instruction, then thinking might just be the only thing we're good at when we graduate.

Michael Williams is a 2L from Arizona with a passion for innovative ideas, useful gadgets and thoughtful design.

Bank Of America Proves It Isn't Completely Deaf

By Randy Wood
Staff Writer

A few weeks ago, several major U.S. banks announced unsettling new policies. These banks were going to start charging debit card users a monthly fee for the privilege of using their cards. Specifically, Bank of America announced that they would begin charging $5 a month for the standard use of a debit card, while other banks like JP Morgan Chase and Wells Fargo announced that they would begin testing a $3 fee in specific markets. Initially, it seemed as though these debit card fees were destined to join airline baggage fees in the "unavoidable fee" category.

It seems as though the banks were relying on the historical laziness and apathy of the American consumer in order to "pull the wool over our eyes" and get these fees instituted. Typically, when faced with a new policy or inconvenience, most of us do nothing. We reason with ourselves that someone else will raise the banner and protect our rights. We talk ourselves out of action because we might feel that one person can't possibly change policy. Ultimately, after no one takes up the fight, new policies become streamlined and adopted, and ultimately become a new part of financial life. Perhaps these big banks should not be so blatantly self-serving, especially in the wake of a global financial crisis that they caused and that we as taxpayers had to bail them out of. The thought that their consumers would just roll over and accept this latest insult was flawed.

This time, American consumers found their voice and immediately spoke up to condemn this new practice. The result? Bank of America announced November 1, 2011 that it would not be charging $5 a month for use of debit cards (at least for now). I applaud the collective effort of thousands of American consumers who helped to curb this ridiculous fee. Thank you. Your efforts saved me and a large majority of Americans from yet one more banking scheme to charge consumers more money. As a Bank of America consumer myself, your help saved me sixty bucks a year.

The bank's reasoning for their new fees was that last year's "Durbin amendment" ate away at their revenues by capping the debit card "swipe fees" they were allowed to charge merchants. Before this 2010 legislation, banks charged merchants an average of $0.44 for each debit card transaction. In 2009 alone these debit card swipe fees

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Bank of America, Continued from Page 6

accounted for $19 billion in bank profits, which according to the Huffington Post were collected largely by America's ten biggest banks. Along with other banking regulations, the Durbin amendment capped the amount chargeable by more than half to only $0.21 per transaction.

Although a fifty percent reduction may seem like a lot, the Federal Reserve estimates that the actual cost that banks pay per debit card swipe is about four cents per transaction. Some experts even claim that four cents per transaction is more than the banks actually pay. So to put this in context, before the Durbin amendment, banks were profiting $0.40 each time a consumer swiped his/her debit card. This profit margin on each swiped transaction was an astronomical 1,000%. The new legislation reduced this margin to 500%. In the words of David Lazarus who writes for the L.A. Times, "if you can't make money off a 500% profit margin, then you're in the wrong line of work."

It appears as though Bank of America's September 2011 announcement to charge a $5 monthly debit card fee was an attempt to recoup lost profits; however, these new fees seemed completely unreasonable for many of the Bank of America's 57 million customers. Don't we already pay enough in overdraft fees, ATM fees, fraud protection and monthly checking account fees? Obviously countless others felt the same way after an enormous backlash from customers and others resulting from the fee announcement, coerced Bank of America to issue a press release on November 1, 2011 claiming that "[w]e have listened to our customers very closely over the last few weeks and recognize their concern with our proposed debit usage fee. Our customers' voices are most important to us. As a result, we are not currently charging the fee and will not be moving forward with any additional plans to do so."

You listened very closely, huh? If Bank of America had been listening to its customers, wouldn't it have avoided this whole debacle in the first place? Why didn't Bank of America learn a lesson from recent Netflix / Qwikster disaster? If Bank of America had paid attention, it might have seen that trying to recoup lost profits by jacking up fees and complicating your services only leads to a mass exodus of customers and huge stock losses.

If you read between the lines of the Bank of America press release, you'll realize that what they're really saying is: "Our bad! I didn't think you'd get that worked up; but hey, you can't blame us for trying, right?" It's fascinating that some of our country's largest corporations are just now learning that "hindsight is always 20/20." By looking at Bank of America, it seems it must get easier to listen "very closely" when your company drops from its position as the number one U.S. lender after the new fees were announced. In fact, it seems they listened closer because their company suffered twenty days of trading losses in the third quarter of 2011 alone, beginning with a $119 million drop on one day alone, the biggest loss since the worst of the banking crisis in 2008.

In today's struggling economy, one would think that companies can't afford to be tone-deaf to their customers; however more and more these companies seem to be bulldozing their consumers' wants and force-feeding additional fees. After all this, they have the audacity to be surprised when their actions lead to undesired results. It seems as though listening to customers before making drastic changes is sound business advice more companies need to follow. One has to chuckle at little, because "listening very closely" perhaps only requires that companies remember the age-old adage "the customer is always right!"

Nonetheless, American consumers owe thanks to people like twenty-two year old DC resident and online activist, Molly Katchpole. Katchpole's www.Change.org petition against the Bank of America fee gathered well over 300,000 signatures and urged Bank of America in the circulated petition letter that "American consumers can't afford these additional fees. We reject any claims by Bank of America that this latest fee is somehow necessary. Please, do the right thing. Reverse your decision to charge customers $5 each month for using their debit cards to make purchases."

Although I rarely agree with a Democrat like Illinois Senator Dick Durbin, the advice he gave consumers proved to be very sound. When the Bank of America announced their monthly fee, Durbin noted, "My word to consumers across America is talk with your feet, look for a debit card that doesn't charge the Bank of America fee . . . [and] look for competition that doesn't charge this fee, [and] move [your] debit cards." So next time we see an unreasonable change in service, additional fees, or price hikes that seems just too unreasonable, and before we grab our tents and join the Occupy Movement, we need to remember that to get banks to listen very closely, the best vote we can make is with our feet.

Randy Wood is 1L and a disgruntled Bank of America customer

TODD WATSON

Amat Victoria Curam:

"Victory Favors Careful Preparation"

Alumnus Advises Targeted Networking

As fall semester draws to a close, the prospect of summer and post-graduate employment suddenly looms large on the horizon. For many students the job search now begins in earnest. This process is invariably daunting, and this is as good a time as ever to stop and consider the advice of knowledgeable people.

In this interest, Nota Bene solicited the uniquely thoughtful advice of GW alumnus Adam Gropper, J.D. '99. After graduation Gropper went to work for Baker & Hostetler, made partner after seven years, and now works on the Hill as legislation counsel for the Joint Committee on Taxation. He did all of this after "bombing" his first year of law school and being rejected by "literally hundreds" of firms, as he put it. Last year he started legaljob.com, where he and other lawyers offer advice for success in law school, in finding a job, and as an associate. For purposes of this article, he limited his advice to finding a job.

Gropper's recommended path begins at the CDO, but only for students that already have an idea of where they want to go. "The Career Development Office has a wealth of knowledge and can be a fantastic resource," said Gropper. "But you have to tell them exactly what you need. You can't ask them to determine your career goals for you. You have to already know what kind of law you want to practice when you approach them. They can't really help you decide either. That's not their role. But if you go to them and tell them that you want to practice, say, tax law, they can provide you with a database of GW alumni practicing tax law and help you make contact with those people."

The purpose of acquiring such a list of alumni is to conduct a campaign of targeted networking. But as these lists are likely to contain hundreds of names, it is wise to narrow them down to those people that are likely to be most able, and to want, to help you. Gropper recommends doing this by using "touch points," or areas of commonality, between yourself and the alumni. The first touch point is that you both attended GW Law. The second could be that you went to the same undergraduate institution. The third could be similar background or place of origin. And the fourth, and most important, should be the field of practice that they are in and that you would like to be in. The more touch points you share with an alumni, the more you should want to meet that person. "Touch points tend to make a person more disposed to try to help you," said Gropper. "People like to help people that are like them."

Help from the right people can be invaluable, but finding them is only half the battle. Since alumni are generally complete strangers, the right way to establish contact should also be carefully considered. "Most lawyers are happy to talk about themselves and are very willing to discuss how they started their careers, what opportunities they see in their fields, and other important things you should think about," said Gropper. "But – and this is important - when writing an exploratory email to a lawyer you've never met, it's a good idea to start by saying 'I'm not asking for a job interview, just for advice.' You should make that explicit. This puts the lawyer at ease, and can make him more inclined to help you." The reasoning behind this approach is that successful attorneys get emails from law students hoping to work at their firms all the time, and they usually don't bother to respond. You don't want to be lumped into this category unnecessarily. The point is to engage with people that can help you find a job without putting any pressure on them to do so.

This strategy is all fine and good for students that already know what they want to do, but what about those that don't? "It doesn't have to be so daunting," said Gropper. "You have to make a decision at some point about what you want to do, but only to get to the next spot. It's only your next job, not the rest of your life."

"Employers want to see more specialization these days than they used to," said Gropper. "They want to hire people who have been pursuing a certain field of practice for a long time. You want to give them the impression that you have been. This means you have to double down on a position, even if you don't feel 100 percent certain about it. For instance, if you're trying to get a job in international trade law and have been working for a small firm that deals partly, but not primarily, with trade issues, you want it to appear to the potential employer that you pursued the position precisely because it allowed you to work in international trade, and that this was your plan all along. It's not lying, but to some degree you have to fake it till you make it."

SPECIAL FEATURE

Prerna Lal

The Road Home

The Story of An Undocumented Resident of the United States

"Dad, why are we going to America? I don't want to go. This is my home."

"You don't get to have a say in the matter. Go pack your bags."

I was merely 14 when my father decided to pack up and move me to the San Francisco Bay Area, California all the way from the islands of Fiji. That's a 12-hour flight away from everything I knew, including my mother, whom he was leaving behind. He was running away and could not articulate to me why, besides the fact that he wanted out and it didn't matter if anyone else, let alone the newspapers, understood.

I briefly considered running away but had nowhere to go. I remember packing my favorite pair of red Nike shorts, a worn-down pillow and my pink childhood blanket that had been washed so thoroughly over the years that it could pass for white. He wouldn't let me take anything he deemed as junk: sea-shells, a priceless collection of Nancy Drew novels, love letters from my childhood sweetheart. I never got to say goodbye to her. It broke my heart.

Cold dreary weather and allergies *gave me a warm welcome to the United States. We came to live with* one of my uncles in Hayward, California. They enrolled me in high school and I was expected to pick up right where I had left off, as if nothing had changed.

The abuse started soon after we arrived. Sometimes, he would whip out his belt and pelt me till he got tired. Other times, he would grab me and smash my head against the floor or wall. On some occasions, he'd take a knife and lash me with the blunt edge.

My aunt heard him bellowing anti-gay slurs while hitting me and rather than do something to stop it, she had to know if there was any truth behind his allegations.

"Are you a lesbian?" She asked me the next day when she picked me up from school.

I didn't know how to answer the question. I didn't really identify as a lesbian at that point. I just knew that I loved women exclusively but I didn't know what that meant.

"I don't know," I answered honestly.

"Figure it out. But remember, I don't want any lesbians near my young daughters."

That's the last time my aunt spoke to me or gave me a ride anywhere.

Despite the physical violence at

home, I was a good student. High school was a breeze for me. I scored in the Top 1% of the State of the California Star 9 exams. I wondered if the other good students in my class were treated similarly at home. One day, my Dad came to school, dragged me out of class, took me to a therapist and told her that I was not normal.

"What do you mean she is not normal?" I remember the therapist looking at him questioningly.

"She doesn't like boys," he replied, looking down at the floor in shame.

"That doesn't mean she isn't normal." She chided him and sent him out of the room before turning to me with a barrage of questions that I wasn't comfortable answering.

"He would probably still hit me even if I liked boys."

I don't know what compelled me to say that. I didn't even know that his abuse was a crime. I was brought up to believe that a parent beating her or his child was just another form of discipline. But she was adamant about calling the cops. I was even more afraid – who would take care of me if my father was taken away?

The cops came to my school and called me to the principal's office, where they proceeded to interrogate me about my father. I lied to protect him. I had no other choice. Unfortunately, he did not see it that way. I had shamed the entire family.

"From now on, you are not my daughter. If you continue to like girls, you mean nothing to me." I was 16 when my father disowned me.

Despite all my heroics, my mother is the real hero of this story. She had followed us to the United States shortly after a U.S. supported military coup ripped through Fiji. She knew there was no going back and that she had to create a life for us here, if only for my sake. Fortunately for us, her mother was a U.S. citizen and her entire family was based in the United States.

After my Dad had disowned me, she took me aside and told me, "Don't *worry. Your mother is still alive. I will take care of you. We'll both get our* papers soon and things will be better. In this country, you can be whoever you want to be."

Her mom sponsored her for a green card in 2000 and I was named as a derivative beneficiary of the petition since I was still a minor at the time. The lawyer who handled our case told us that everything should be a slam-dunk.

"When do I get my green-card, Mom?"

"Don't worry about that. Don't worry about anything. Just go to college. By the time you get out of college, we should get it." She was my savior and I had no reason to doubt her.

With the little money she had saved up from cleaning hotel rooms and working a fast-food job, she bought a small cleaning business. She enrolled me in a local community college. I had graduated at the top of my class in high school. They were more than happy to take me even without the proper immigration paperwork. I would go to school in the day and work for the cleaning business till the wee hours of the morning.

But I graduated too soon. Mom encouraged me to continue going to school, so I enrolled at San Francisco State University, for a Masters in International Relations. At 22, equipped with an advanced degree, I once again asked my mother about my papers. This time we had enough money to go see a better lawyer for a consultation.

"What do you mean, she aged-out?" my mom asked him, perplexed.

"She is too old now to qualify for a green card with you. You would need to file for her again separately, after getting your green card. She will have to wait in line again."

"How many more years does she have to wait? She has already waited 8 years for her green card."

"7-8 more years. There is no way to tell. Maybe she should consider getting married."

"I keep telling her to find a boy," my mother said, agreeing with the lawyer.

"She has plenty of time. Just make sure he is a U.S. citizen."

It hurt. I kept quiet about my homosexuality. I didn't want to shame her or my family in front of a stranger. I tried a different tact.

"I thought the Child Status Protection Act (CSPA) protected me. Doesn't INA 203(h)(3) let even aged out derivative beneficiaries the right to keep the original priority date from the original petition and reapply it to a new petition? So I should be able to get a green card immediately if my mom filed for me right now using the date assigned to us from my grandmother's petition."

He seemed a little surprised. I had done my research. "You are right. But that's not how the agency is interpreting the law. It is too risky to apply under that right now, with litigation pending. You will likely be denied and placed in deportation proceedings. Your only hope is the DREAM Act [a legislation intended to grant a pathway to citizenship for certain undocumented students] or getting married to a U.S. citizen."

My mother seemed confused. "Why doesn't the government just follow the law? I have my green card. Why can't you have your green card?"

"Mom, they have their own interpretation of what the law says."

"So what do we do now?"

"There is no way I want to spend my 20s without the ability to work legally, drive, travel and become a productive citizen. I can take voluntary departure and leave the country."

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SPECIAL FEATURE

Continued from Page 8.

"And go where? Your whole family is here. What am I supposed to do without you?"

I didn't know how to respond. I still don't know how to respond.

Having given up on the process, both my mother and older sister (a U.S. citizen via a bona-fide marriage to another U.S. citizen) started asking around for various suitors for me. I faced intense pressure at home to get married to a guy for papers. The only way to put an end to it was to be as out as possible. The best way to protect myself was to break through the barrier of invisibility. And that was the undoing of my chains.

In October 2007–after Congressional failure to pass the DREAM Act—I met other undocumented youth like me on an online portal, who were willing to do more than just sit around in fear and live in the shadows. We started organizing in several states for the DREAM Act and against the criminalization of immigrant communities. It didn't matter if anyone supported us or not. I realized that working within our communities was empowering and "if we build it, they would come." And there was no looking back when we started conducting civil disobedience actions all over the country. It only took a few dozen dedicated individuals to create and fuel a movement that could move politicians to reconsider a dead piecemeal legislation time and time again. At some point, it didn't matter to me whether we ultimately failed or succeeded – the fact that we could lead such public lives without fear was victory enough.

At 25, I had a quarter-life crisis. I had an advanced degree, and still did not have the right to work legally in my own home, drive, travel abroad, or obtain loans to further my education. While I continued working for the cleaning business, my mother did not have the financial support she needed and our home was getting foreclosed by the bank. I felt helpless and felt the walls closing in on us. The last ten years of limbo seemed like one long day that never ended. Fed up with the system, the situation at home and seeking a final resolution, I decided to attend law school and pursue litigation regarding my own immigration case since no lawyer was willing to take it on.

I applied to and received admission to some of the best law schools in the country, and settled on attending The George Washington University in Washington D.C., a couple thousand miles away from home in California. I didn't know how I would get through it but once again, my mother was by my side. She emptied out her retirement savings accounts and took another job to pay for my tuition since I didn't receive any federal loans or grants like most of my peers.

During my first year of law school, I resumed adjustment of status based on the Child Status Protection Act, knowing that a rejection would place me in deportation proceedings. And USCIS did precisely that – they denied my adjustment of status and placed me in deportation proceedings, during my final semester exams, much to the devastation of my friends, family members and my girlfriend at the time.

"You are getting deported? I'll marry you, you know," she said to me one night as we lay in bed together.

"That's not going to help even if we could get married legally in some state. Besides, you know that I don't believe in the institution of marriage. It's heteronormative, not queer."

"What are you going to do?"

"I will fight this like I've fought everything else. I may be a Dreamer but they are the ones who are really disillusioned if they think they can separate me from my loved ones."

Few people understand that the irony of deportation proceedings meant that I could finally work legally, obtain a social security number, a driver's license and state identification. And I only needed to drag the case for five years to get a green card through my mother's second category petition for me. That seems plausible given the current immigration court backlogs.

I took a legal fellowship in San Francisco for the summer and came back home to spend time with my mother. She seemed to have aged more in the 10 months that I was away from home than the last 10 years we had spent struggling to make a living here. Due to the stress of my impending deportation and our financially dire situation, she was hospitalized in July with high blood pressure and hypertension.

"There is something I need to tell you. I don't want you to hate me after I die."

"You aren't dying. Quit being so dramatic."

"Your father was always bad at taking care of us. But he made a lot of sacrifices for his family."

"He cheated on you right after you gave birth to my sister," I retorted. "I don't even know why you took him back or put up with him."

"You know your grandmother," she looked at me, exasperated. "No one supported me at the time. I was ready to raise your sister on my own. I moved to another city. And then he came back begging. He resigned from work on a Friday, ready to go with him to New Zealand and took back his resignation on a Monday."

"Wait. He had an affair with a man?" I don't even know why I asked that question. Maybe I was confused by the pronouns. Maybe in my subconscious mind, everything finally made sense.

"Yes. Your father is gay. Well, he says he is bi-sexual." I tuned her out. It made no sense at first. But then it did. The repressed anger that came out of nowhere; the posters of male soccer players on bathroom walls; his love for Will & Grace; his support of gay marriage but persistent hatred of my woman-loving ways.

"That is why he hates me," I whispered to no one in particular.

"Yes. I keep telling him how proud I am of you."

That certainly didn't help the situation. I had so many questions for my mom. But only one made its way to my lips.

"How come you like me so much?" I asked, swallowing back the lump in my throat.

"I love you. You are the best child I could have. And it's not your fault that you have someone else's defective genes."

It stung. The part of me that she considers defective is also the part of me that knows how to love without fear and restraint. But I was too stunned to argue with her at the moment. Besides, she had her own question for me.

"What are we going to do now?" she asked, referring to my gigantic law school tuition and immigration court hearing on November 10.

"Don't worry, Mom. You've taken care of me for so long. Now it is my turn to take care of you." I smiled and continued. "Besides, this is my home now. And no one is going to send me anywhere I don't want to go."

Occupy/Serve

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better. However, this is not a universal understanding at the occupations.

One day I was standing at the occupation kitchen when a man was lamenting about houseless people who were coming to eat food, but not participating in the occupation. He wanted to distribute tokens so that food would go to movement participants only. I and another man (who is himself houseless) said that we believe this movement is about creating spaces where everyone can eat, find shelter, and camaraderie. My friend also added that he had been reaching out to people living in the streets and encouraging them to join the occupation or at least get food.

We were not interested in securing power over food distribution; we only wanted to serve others. I may not ever be able to fully liberate myself from benefitting from others' suffering. I may be no less of an oppressor than the founders of this nation, but this movement has shown me that importance of valuing service over power. To me, this is much deeper than taking the power to redistribute resources; we must create a new culture of empathetic service. We will not succeed in spreading this shift through political channels. Instead, we must communities based on these new principles and demonstrate their effectiveness to others.

Finally, after I was arrested a lot of online media outlets spread a lot of things that were not true. Armed with a new sense of empathy, I reached out to one of the blogs that was particularly aggressive in its attacks against me. The author and I are set to go visit the occupation later this week and perhaps we will reach common ground. So when he asks me about what we want, I will tell him "To Serve."

This is the LAST ISSUE...

...before finals, anyway. We'll see you in January!

Nota Bene welcomes signed letters to the editor from individuals or student groups.

We're also always looking for new staff, so if you have something to say, email us at

notabene@law.gwu.edu

FEATURES

Stephanie Levitt

Office Hours: Professor F. Scott Keiff

He has been named one of IP Law and Business's "Top 50 Under 45." He compares scheduling office hours to scheduling an appointment with a fitness trainer. He sees the government as a preclusive entity in the field of Intellectual Property Law.

He teaches Property, Corporations, and Patent Law. Who is this professor? He's Professor F. Scott Kieff.

As an undergraduate at at M.I.T. majoring in Molecular Biology, Professor Kieff gave little thought to the concept of lawyering. He concentrated on such topics as physics, chemistry, polymers, and computer hardware, taking as many classes as he could. "The cost of tuition was the same no matter how many classes I took," reminisced Professor Kieff. "So I got M.I.T.'s version of a liberal arts degree."

He picked up a minor in Microeconomics and, upon graduation, toyed with the idea of going to law school.

"I do remember having a conversation with friends and family at the end of my junior year of college saying 'I don't know what I want to do. I like a lot of different things.' They said 'If your problem is that there's nothing you like, you have a serious problem. But if your problem is that you like a lot of different things, you don't have a problem because it doesn't matter what you pick. What matters is THAT you pick and that you throw yourself into it - do it like you own it.'"

Professor Kieff chose to attend the University of Pennsylvania Law School for two reasons: first, because the first year was graded on a pass/fail basis, and second, because one of his best friends studied there.

He ended up enjoying most of his classes in law school. "I think the classes that I liked the most, though, were the classes taught by the professors who were most invested and involved in the substance of what they were talking about," he said. "And they didn't even have to always be talking about the focused topic of the class. The off-topic comments that focused on practice and theory, even though they weren't on the exam, were what made the classes so exciting."

Always focused on real-world applications of legal theories, Professor Kieff worked as a summer associate at law firms during his first and his second summers of law school. He also gained experience as a clerk in the U.S. Court of Appeals under Judge Giles Sutherland Rich, before returning to IP litigation.

"While I was practicing," he reminisced, "I started to write. As I wrote more and more, I realized basically that the practice community seemed to care first and foremost about what you could do for them. And the academic community seemed to care first and foremost about whether you were an academic." After uncovering his potential to be a full-time academic, Professor Kieff accepted a teaching job at the Washington University School of Law while maintaining a part-time connection to the practice community.

The engaged approach of GW Law students and faculty impressed Professor Kieff and made him eager to join the community in 2009. "I maintain a very active relationship with the real world," he informed proudly. He believes that his connection to the real world allows him to teach more effectively. "I try to work in as much theory and practice as I can so that the students see how the actual black letter law came to be and how it can be used."

As a professor and an academic, Professor Kieff, through his copious writings, developed a distinct voice among IP academics. He began to recognize that typically, only one academic perspective regarding IP law was featured—and that he didn't agree with that perspective. "There were about fifteen academic centers at top law schools devoted to the so-called IP Law and at the time almost every one of them was constantly and uniformly talking about how IP rights were bad. And I thought to myself, 'Wait a minute. I don't think that's right.'"

While the majority of IP academics advocate governmental regulation of intellectual property, Professor Kieff disagrees. "Basically, what property rights do is they essentially force people to talk to and negotiate with each other. Regulatory approaches force people to talk to and negotiate with different branches of the government. Most regulatory approaches, I think, overlook that the people who are best able to work the apparatus of our government are always the players with the biggest law firms on K Street and the largest pocketbooks. Regulatory approaches further entrench large business interests in a way that stifles innovation and competition. Mistakes also get locked in the regulatory approach because when the government makes a mistake, it binds all of us."

With these ideas in mind, Professor Kieff and some colleagues founded the Project on Commercializing Innovation at Stanford University's Hoover Institution, in order to explore numerous academic IP Law concepts. "Our project was designed

to tap into the policy, academic, and practice communities and say, 'Hey look. We're going to try to present an idea that's different from the ideas that are being held out as THE academic perspective,'" he explained. "We don't want to go so far as to say that there are only two academic perspectives. But we do want to make sure that there are at least two."

Currently, Professor Kieff, in addition to directing the Project on Commercializing Innovation, mediates and arbitrates cases, consults on projects, and sometimes serves as a testifying expert. "My duty is not to the client. My duty is to myself and the project that I'm hired to work on," he explained. "People come to me because they want my unvarnished, independent view. I give it, and then the client and his lawyer can decide what to do with it.

He also works on numerous projects simultaneously because, in his words, "I find that projects never write themselves and I can never predict which ones will write faster or slower." One of Professor Kieff's main current projects is writing a book denouncing recent changes to IP law, examining the commonalities between the ups and downs in Intellectual Property law, and explaining why "we would expect it to go down further before coming back up."

Recently, Professor Kieff was recognized at the United Nations in New York as a finalist for the World Technology Award for Law. Finalists were chosen for their "innovative work of the 'greatest likely long-term significance' in their fields."

For students interested in practicing IP Law, Professor Kieff advised not to get caught up in choosing a career. "The single biggest obstacle I find that students have is that they get caught up in trying to pick rather than just throwing themselves in. Don't try to pick right. Just pick. Nobody I know who I look up to who had an awesome career planned it."

FEATURES

JONATHAN FOSTER

Food Court: The Holiday Spirit

In cooking as in life, one really is the loneliest number. As we approach the fall holidays, food becomes the increasingly important centerpiece of togetherness, the beacon for family and friends to join in celebration. They say Thanksgiving began in 16

21 in Plymouth, Massachusetts as a harvest celebration for the community. Today, Thanksgiving is often marked by family gathering, overindulgence, and the ensuing leftovers that seem to last for weeks. In either case, the indispensable elements are the people that share in the moment, that gather around a communal table and enjoy a common feast.

Don't get me wrong – the food is important. Thanksgiving has become a source for home cooks to showcase their talent in large scale and for aspiring cooks (or loving children) to offer their hand in the process. There is an inherent recognition that for an occasion marked by a special family spirit, the food must not be any less special.

But Thanksgiving is a beautiful holiday not merely for its cornucopia of cuisine but because it is a pure expression of American values: a united family, welcome neighbors, and the opportunity to share something special, together, every year. This is what they meant by "the pursuit of Happiness."

While law school may feel like a far cry from Thanksgiving, the same principles apply. In a field of study that is historically competitive and in a job market that is currently uncertain, it is easy to approach law school with a different frame of mind than we do everyday life.

But the minute we allow law school to cause us to shut ourselves out from our friends and family is the minute we begin to hate it. Many people say they study better alone, but at the same time you can't spend a whole day in isolation. While the material we study is important (very, in fact), equally significant are the friendships we make, the camaraderie we share, and the relationships we have.

Law school is three years long. That is way too much time to lose to loneliness and stress. We must enjoy the experience with others, share our burdens, and release our stress at the metaphorical (or literal) dinner table. We cannot lose sight of family and friends just because it isn't a holiday.

Brown Bag Turkey
A Thanksgiving Classic

Preheat oven to 350 degrees.

Remove the giblets from the bird, then rub unsalted butter all around the outside of the turkey.

Salt and pepper it (plus any other spices you may want such as paprika, sage, etc.).

Quarter an onion and get a few stalks of celery together.

Place the whole turkey, onion, and celery into a double brown paper bag (from the grocery store) and tie the bag closed with twine.

Poke a couple holes in the bag with a fork and place it in the oven.

Cook for 3 to 3 ½ hours for a moist, browned turkey!

FEATURES

Blake Behnke

Badinage with the Kardashians

On Halloween, the Twittersphere exploded with a vital piece of breaking news. Of course my regular readers already know what I'm talking about – they took my advice and created Twitter accounts. For the rest of you uninitiated technophobes, I'll rehash the significance of this monumental announcement. But before I break the news, I need to stress the kinds of announcements you're missing out on if you haven't yet joined the Twitterverse. Ok, enough with the preliminaries. According to @ryanseacrest on October 31, "Yes @kimkardashian is filing for divorce this morning."

This is "straight from the horse's mouth" news. I realize that Ryan is not actually a horse but instead a abnormally small human man, but you should know that he had more to do with the Wedding than anyone else, including Kim and Kris. In case you didn't know, Ryan Seacrest is responsible for the creation and promotion of all the Kardashian reality shows. In other words, the man is single-handedly bringing about the end-times.

The marriage lasted seventy-two days. That means that Kim and Kris were actually engaged for longer than they were married. And get this, the couple made an estimated 17.9 million dollars from the wedding! Wow. I'm hoping to score a KitchenAid mixer and some nice dishes and towels when I get married, but 18 million dollars?! And the best part? They didn't pay for any of it! All three of the 20,000 dollar Vera Wang gowns were free as well as almost half a million dollars of Perrier Jouet champagne.

Such extravagance is obscene in today's economic climate. The viewership of the Kardashian television empire highlights the enormous economic gulf between the haves and the have-nots. By and large, the women watching Kim and Khloe are not other millionaires, instead they represent middle America: families living in 3 bedroom homes in the suburbs subsisting on annual incomes of around 40,000 (or in Kardashian dollars, two Vera Wang dresses). The cost of catering for Kim's wedding was three quarters of a million dollars. That's more than most of the show's viewers will ever save in their entire lives, and it disappeared in a few hours as five hundred guests consumed hors d'oeuvres and pastries.

I know what you're thinking: Blake, why do you know so much about the Kardashians? I can explain. I have a girlfriend. This girlfriend doesn't have cable at her place. So because I have a TiVo at home, the Kardashian wedding extravaganza was recorded (and eventually watched) at my apartment. The show itself is a train wreck of epic proportions. It's a Greek Tragedy exposing the dangers of wealth and the problems inherent when a family turns itself into a brand. The only likeable person on the entire show is Lamar Odom who seems relaxed and carefree – as though he is the only one who's in on the fact that the entire thing is a big joke.

Since the news broke, various tabloid news outlets have reported on the details of the divorce. Some commentators are speculating that the entire marriage was a sham perpetuated on the public to make money. My favorite reaction came from the Twitter comedian @robdelaney who wrote a letter threatening to sue Kim, E! Entertainment, and Comcast if she and Kris do not get back together and give it another try. Believe it or not, I think Kris is willing to try to make things work. In his official statement on the day of the divorce filing he said, "I love my wife and am devastated to learn she filed for divorce . . . I'm willing to do whatever it takes to make it work." In an ironic turn of events, it appears that Kris was unable to keep up with the Kardashians.

Kim's sister Khloe appeared less shocked, writing on her website, "I want to thank all of our amazing fans for your unconditional love and support. My sister is going through a very difficult time and your kindness right now means the world to all of us. Kim, we love you more than anything." Um, FANS!?!?! The Kardashians are not a basketball team. They are famous for being famous – a remarkable circularity made possible by our collective obsession with celebrity gossip.

This celebration of celebrity for its own sake sickens me. It is a disease that seems to have somehow spread across America. I've lived in Washington, Utah, Tennessee, Kentucky, Oklahoma, Texas and now DC – and wherever I go people are obsessed with this self-indulgent opulence. I have an enormous problem with this – reality television is grooming the next generation of Americans for a life of voyeurism rather than participation. There is a world of difference between a mother who wastes her time on the couch watching the Kardashians and a Mom who spends her free time at Book Clubs and PTO meetings, and unfortunately, too many children in the rising generation are being raised by these celebriphiles.

The reality is that the lives of the Kardashians are not significantly different as a result of the television program. While it's true that they make millions more as a result of their branding arrangement with Mr. Seacrest, the Kardashians were rich before the show and they'll continue to be rich for the foreseeable future. They'll continue to spend their money on silly things and ride around in black Escalades while complaining about shallow things. The bigger problem is the amount of time the general public dedicates to this drivel.

The show perpetuates the lie that money and success can be amassed without significant effort and dedication. As law students with exams right around the corner we can all appreciate the truth behind the idea that hard work pays off. This Kardashian Kurse only serves to reinforce my belief that reality television is useless crap. Turn on BBC America or watch some of the original series on HBO and Showtime. Whatever you do, stay away from the E! Channel (unless of course, the girlfriend is over and it makes her happy).

When he's not busy trying to keep up with the Kardashians, Blake Behnke blogs at http://binkmi.tumblr.com/.

Christen Gallagher

Snippets